IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO(MVA) No. 613 of 2003.

Judgement reserved on: 7.5.2007

Date of decision: 15.5.2007.

The Oriental Insurance Company Ltd. ….. Appellant.

Vs.

Smt. Shanti Devi & ors. …. Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. Lalit Kumar Sharma, Advocate.

For the Respondents : Mr. Baldev Singh, Advocate, for respondents No. 1 to 4.

Mr. Ajay Sharma, Advocate, for respondents No. 5 and 6.

Kuldip Singh, Judge.

The respondent No.3- insurer, is in appeal against the award, dated 6.9.2003, passed by the Motor Accident Claims Tribunal, Una, in MAC Petition No. 53 of 2000, whereby petitioners have been awarded Rs.3,94,000/-, alongwith interest at the rate of 9% per annum, as compensation on account of death of Kishori Lal. The liability of respondents No. 1 to 3 has been held to be joint and several. However, compensation has been made payable by respondent No.3, the insurer.

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

2. Brief facts giving rise to the petition are that Kishori Lal was unloading marble slabs from truck No. HIU-1631 on 3.12.1999 when respondent No. 2 Ram Sarup, driver suddenly applied brakes resulting in big jerk and Kishori Lal was crushed under the marble slabs. He was removed to hospital, where he died. The accident is the result of the rash and negligent driving of the driver. The truck is owned by respondent No.1 and insured with respondent No.3, insurance company. The deceased at the time of the accident was 40 years and earning Rs. 6,000/-, per month. Petitioner No.1 is widow and petitioners No. 2 to 4, are daughters and sons of deceased Kishori Lal. They have claimed Rs. 10,00,000/-, as compensation.

3. Respondents No. 1 and 2, filed joint reply and denied most of the averments made in the claim petition. It has been denied that respondent No.2 all of a sudden started truck and applied brakes, which resulted into a jerk and as a consequence thereof Kishori Lal was crushed under the marble slabs. It is their case that deceased died due to his own negligence. The truck was stationary at the time of the accident when the marble slabs were being unloaded.

4. Respondent No.3 – insurer, has contested the claim petition by taking several preliminary objections. It has been submitted that driver was not holding valid and effective driving licence to drive the vehicle, which was without RC, fitness certificate and route permit. The insurance company has denied its liability to pay the compensation.

5. The learned Tribunal has held that accident had taken place due to the rash and negligent driving of respondent No.2 of the truck No. HIU 1631 and the petitioners are entitled to compensation, as noticed above.

6. I have heard the learned counsel for the parties and have also gone through the record.

7. It has been submitted on behalf of insurance company that the truck was stationary and Kishori Lal had not died as a result of the use of the motor vehicle. The learned counsel for this has relied on Section 165 of the Motor Vehicles Act, 1988. It has been submitted that the Tribunal has wrongly made liable the insurance company.

8. The learned counsel for the petitioners as well as for driver and owner have supported the award and have submitted that the insurance company has been rightly held liable in the impugned award by the Tribunal. It has been pleaded in the petition that when Kishori Lal was unloading marble slabs from the truck, all of sudden the driver of the truck started the truck and applied brakes at once due to which a big jerk occurred and the deceased was buried under the marble slabs, as a result of which deceased sustained multiple injuries and died later on. The owner and driver in their reply have pleaded that truck was stationary and was being unloaded and, therefore, they are not liable to pay any compensation to the petitioners. The insurance company in its reply has denied corresponding para No.23 of the petition for want of knowledge. In para-23 of the petition, the petitioners have pleaded how the accident

had occurred. PW 3 Gurbax Singh is the eye witness. He has stated that on that date, he alongwith Kishori Lal and others were unloading marble slabs from the truck, in question. They requested the truck driver to adjust the truck at a level as they were facing difficulty in unloading the marble. The driver all of a sudden started the truck, as a result of which truck jumped and the marble slabs fell on Kishori Lal and he came under them. Kishori Lal was inside the truck at that time. He was taken out with great difficulty and removed to hospital, where he died. He has been cross-examined at length, but nothing has been extracted by respondent No.3 so as to discredit his testimony.

9. RW 1 Kuldip Singh has proved report Ex. RW 1/A. RW 2 Ram Sarup is the driver. He has proved the driving licence Ex. RW 2/A. He has denied that without informing the labourer, he reversed the truck, due to which a jerk occurred and the deceased buried under the marble slabs. Copy of RC of the truck is Ex. RX and copy of insurance policy is Ex. RY. PW 2 Manohar Lal proved Ex. P-1, report No. 16 dated 3.12.1999. The learned counsel for the insurance company has relied upon Ex. RW 1/A. It is on letter dated 9.5.2003 of Satish Kaushal, Surveyor addressed to the District Transport Officer, Hoshiarpur. This letter was returned with the remarks that the record of DL No. 156-T/1970-71 is not available/ traceable, as per office record. According to learned counsel, this shows that the driving licence Ex. RW 2/A alongwith its endorsement of heavy transport vehicle is not a genuine one. This submission of the learned is only noticed to be rejected. The mere report Ex.

RW1/A on letter dated 9.5.2003 is not proved the fact that licence Ex. RW 2/A alongwith its endorsement of heavy transport vehicle, is not genuine. At the most, the report Ex. RW 1/A proves that at the time of making of the report, the record of driving licence DL No. 156-T/1970-71 was not available/ traceable, as per office record. It does not mean that the driving licence Ex. RW 2/A alongwith its endorsement of heavy transport vehicle is not genuine. Therefore, the contention of the learned counsel for the insurance company that the driving licence alongwith its endorsement of heavy transport vehicle is not genuine, is rejected.

10. The other submission of the learned counsel for the insurance company is that truck was stationary and the accident has not taken place during the use of the truck. There is positive evidence on record that Kishori Lal was inside the truck and the accident has taken place when the driver of the truck all of a sudden put the truck in motion, as a result of which the truck got jerk and Kishori Lal was crushed under the marble slabs. Therefore, viewing from any angle, the truck was very much in use at a public place at the time of the accident, which crushed Kishori Lal and as a result of which he ultimately died. The Tribunal has rightly appreciated the evidence and has correctly come to the conclusion that accident has taken place due to the rash and negligent driving of the truck driver. This finding of the Tribunal requires no interference and it is affirmed. It is held that accident has taken place due to rash and negligent driving of the truck driver and Kishori Lal has died in the accident when the truck was in use at a public place.

11. In view of above discussion, the appeal is dismissed. The compensation, awarded by the Tribunal to the petitioners on account of death of Kishori Lal alongwith interest, is confirmed. Respondent No.3 shall pay the compensation to the petitioners in the manner apportioned by the Tribunal in the impugned award. No costs.

May 15, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**